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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SEBASTIAN S., a Person Coming  
Under the Juvenile Court Law.

B221465  
(Los Angeles County  
Super. Ct. No. CK75820)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROSA S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, D. Zeke Zeidler, Juvenile Court Referee. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Rosa S. (mother) appeals from a juvenile court order adjudging Sebastian S. a dependent child as described in Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).<sup>1</sup> Mother also appeals from the dispositional order removing Sebastian from her custody. (§ 361, subd. (c)(1).) We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### *1. Prior Dependency Action Involving Sebastian's Siblings Arising From Domestic Violence Between Mother And Luis*

In January 2009, while mother was pregnant with Sebastian, mother and Sebastian's alleged father, Luis, were involved in a verbal and physical altercation in front of mother's three other children. Mother told law enforcement that Luis pulled her hair, threw her to the floor, and choked her. Mother's children intervened to stop the altercation. Luis had a human bite mark on his left inner forearm, and mother was arrested on spousal abuse charges. Her three children were placed in the homes of their respective fathers.

The Los Angeles Department of Children and Family Services (the Department) filed a section 300 petition. On March 26, 2009, the juvenile court adjudged mother's three other children dependent children within the meaning of section 300, subdivisions (a), (b), and (j), sustaining allegations in the petition mother and Luis had a history of violent altercations in the children's presence, including the altercation in January 2009, and mother failed to protect the children from domestic violence. The juvenile court also sustained allegations that mother had violent altercations with the fathers of her other children, which included mother striking the father's face with her fists, and other physical violence. Finally, the juvenile court sustained allegations that mother inappropriately disciplined one of her children.

The juvenile court ordered reunification services for mother, including anger management counseling, domestic violence counseling, and parenting education. The

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

juvenile court also ordered a psychiatric evaluation. Mother attended classes, but when Sebastian was born, she was unable to continue to attend and had not submitted to a psychiatric examination.

The juvenile court eventually terminated reunification services, determining the return of the three older siblings to mother created a substantial risk of detriment, and the siblings could not be returned to mother's physical custody. The respective fathers had legal and physical custody, and the juvenile court ordered monitored visits for mother and terminated jurisdiction.

## *2. Sebastian's Detention*

Sebastian was born five-weeks premature on July 24, 2009, and he remained in the hospital after experiencing a feeding intolerance and numerous apnea episodes. The social worker informed mother the Department intended to place a hospital hold on Sebastian because mother had misrepresented to the medical social worker the nature of her open case with mother's other children, mother's domestic violence with Luis, and mother's continued contact with him.

Mother told the social worker that Luis did not live with her, she had limited contact with him, and talked to him only occasionally when he called to ask about Sebastian's prognosis. Mother contacted Luis regarding the Department's concerns for Sebastian and to inform him of the Department's decision.

On August 20, 2009, the Department took Sebastian into protective custody. The Department filed a petition alleging the juvenile court had jurisdiction over Sebastian pursuant to section 300 subdivisions (a) (serious physical harm), (b) (failure to protect), and (j) (abuse of siblings), arising from domestic violence between mother and Luis, prior domestic violence, mother's continued contact with Luis, mother's other dependency case, and the risk to Sebastian.

The juvenile court found a prima facie case to detain Sebastian, and the Department had made reasonable efforts to prevent his removal. The juvenile court ordered detention and also ordered mother to undergo a psychiatric assessment.

Mother underwent a psychiatric evaluation before the jurisdictional hearing. She was diagnosed with a personality disorder. The evaluators observed mother had episodes of uncontrollable anger, and mother tended to diminish the severity of her behavior. The evaluators stated mother's "ongoing lack of insight and accountability for her actions increase her risk of repeating her past behaviors and therefore risk of danger to her son." They recommended that future reunification services should not only be based upon her appropriate behavior toward Sebastian but also upon proper communication between mother and her future domestic partners to ensure the absence of violence in her relationships.

### *3. Interim Reports Leading Up To Jurisdictional Hearing*

The Department's subsequent reports prepared before the jurisdictional hearing further detailed mother's history of domestic violence. The Los Angeles County Sheriff's Department Incident Report of the altercation between mother and Luis was attached to the jurisdiction report. Mother admitted she bit Luis. Mother also attacked the father of one of Sebastian's siblings and threw objects at him in the presence of her children. Mother attacked another one of her children's fathers with a knife, struck him and fractured his nose, and attempted to run him over.

Mother allegedly had mental and emotional problems, including a diagnosis of paranoid schizophrenia, suicidal ideation, and self-injurious behavior which included striking her face with her fists and striking her head against the wall. Mother threatened to commit suicide in the presence of Sebastian's siblings.

The Department's interim review report summarized mother's psychiatric evaluation. In addition to her history of domestic violence, the report stated mother's anger and volatile nature also strained her relationship with Sebastian's siblings. Mother, however, did not take responsibility for her actions and their effect on Sebastian's siblings.

Mother visited Sebastian daily and by all accounts behaved appropriate during her visits. At the request of mother's attorney, the court ordered mother's psychiatric evaluators to consider her behavior toward Sebastian, which included a review of

Sebastian's medical records, and mother's interactions with the medical social worker. In the supplemental report, the evaluators concluded this information did not provide a sufficient reason to alter the previous opinion and recommendations.

#### 4. *Jurisdictional and Dispositional Hearing*

At the jurisdictional hearing, the court admitted into evidence the Department reports, the nurse's notes from Sebastian's medical records, and took judicial notice of the sustained petition, minute orders, and disposition case plans involving Sebastian's siblings. The initial and supplemental psychiatric reports were admitted only for disposition.

The social worker testified she originally believed the case would be resolved with a voluntary family maintenance contract, but the Department reassessed based upon mother's history of domestic violence, prior involvement with the Department, and continued contact with Luis. The social worker also testified that a family friend told her mother contacted Luis in September and was pursuing him but that he did not want to get involved with her.

Mother testified her last contact with Luis was on August 23, 2009. Mother called him after the Department told her that it intended to detain Sebastian. Mother admitted to the violent incident with Luis, and she admitted to violent altercations with the fathers of her other children. Mother testified her children were present during some of these altercations. Mother also found it "weird" that all three fathers of her other children had similar stories about these domestic violence incidents, insinuating that the fathers had concocted the stories.

At the conclusion of the hearing, the juvenile court sustained the petition as amended. The juvenile court characterized mother as in "denial" concerning the domestic violence issues, and it had concerns regarding mother's testimony and her demeanor. The juvenile court explained the Department had shown mother continued to have contact with Luis, there were violent altercations between mother and Luis, and there were prior incidents of violence with the respective fathers of mother's other children, which placed Sebastian at risk.

The juvenile court further found by clear and convincing evidence a substantial danger exists to Sebastian’s physical and mental health. Sebastian was declared a juvenile court dependent and ordered suitably placed outside of mother’s custody. The juvenile court ordered reunification services. Mother timely appealed both the jurisdictional findings and the dispositional order.

## DISCUSSION

### 1. *Substantial Evidence Supports the Juvenile Court’s Jurisdictional Findings*

Mother challenges the sufficiency of the evidence supporting the juvenile court’s jurisdictional findings. A juvenile court’s jurisdictional findings must be supported by a preponderance of the evidence. (§ 355, subd. (a); *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432-1433.) On appeal, we review for sufficiency of the evidence and look for substantial evidence in the record to support the findings of the juvenile court. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We resolve evidentiary conflicts in favor of the judgment, and indulge in all legitimate inferences to uphold the judgment, where possible. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

A child comes within the jurisdiction of the juvenile court under section 300, subdivisions (a)<sup>2</sup> and (b)<sup>3</sup>, if he or she is at a substantial risk to suffer serious physical harm of abuse or will suffer serious physical harm as a result of the parent’s failure to protect. Under subdivision (j) of section 300, if the child’s siblings have been abused or

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<sup>2</sup> Under section 300, subdivision (a), a child may be found a dependent of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” Under this subdivision, a court “may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.”

<sup>3</sup> Under section 300, subdivision (b), a child may be found a dependent of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . .”

neglected as defined in subdivisions (a) and (b), among others, and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions, the child comes within the jurisdiction of the juvenile court.

a. *Substantial Evidence Supports The Section 300, Subdivision (a) Finding*

The juvenile court sustained allegations in the petition regarding mother's history of domestic violence, which included mother's violence toward Luis, the detention of her three other children following the violent altercation, and her continued contact with Luis. As amended, the petition alleges "[s]uch violent altercations between the parents and actions of the parents endanger the child's physical and emotional health and safety and place the child at risk of physical and emotional harm . . . ."<sup>4</sup> The juvenile court concluded mother was still "in denial regarding the history of the case and the allegations," which referred to mother's testimony downplaying the incident with Luis and her history of domestic violence with the siblings' respective fathers. The juvenile court further noted the Department had shown mother continued to have contact with Luis, placing Sebastian at risk.

Mother contends there is no evidence in the record that Sebastian was at any risk whatsoever because mother cared for Sebastian, ended her abusive relationship, complied with the case plan involving Sebastian's siblings, and had no domestic violence incident after January 1, 2009, when her children witnessed the altercation with Luis. Mother asks that we reweigh the evidence and revisit the juvenile court's credibility determination that she had not adequately addressed the domestic violence issues. This we cannot do. The testimony of a single witness is sufficient to support a juvenile court's finding on a dependency petition. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.)

Mother remained in contact with Luis after the January 1, 2009, domestic violence incident. While mother testified she had no further violent encounters, the juvenile court did not find credible that mother had corrected the problems that led to the removal of her other children despite her participation in reunification services to address anger

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<sup>4</sup> The same allegations also are found in the petition under section 300, subdivisions (b) and (j).

management and domestic violence. Even after these services, the juvenile court found mother was in “denial,” when it came to her prior history of domestic violence, and she continued to pose a substantial risk to Sebastian’s siblings. Given mother’s domestic violence history and continued involvement with Luis, there was a substantial risk to Sebastian in that environment.

b. *Substantial Evidence Supports The Section 300, Subdivision (b) Finding*

Mother contends under section 300, subdivision (b), since there is no requirement of “nonaccidental” injury, there is a compelling argument for the insufficiency of the evidence to support the juvenile court’s conclusion, especially when, as here, the conclusion is based upon past events. We disagree.

Section 300, subdivision (b), consists of three elements: “ ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 829.) “The third element ‘effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]’ [Citation.]” (*Ibid.*)

Despite counseling and anger management classes, mother’s past violent behavior was an ongoing concern for the juvenile court, which led the juvenile court to terminate reunification services for mother and Sebastian’s siblings. While mother denied any relationship with Luis, or further incidents of domestic violence, mother’s previous relationships had violent altercations, and the juvenile court observed mother was in “denial” regarding her history of domestic violence. We have no cause to disturb the juvenile court’s jurisdictional findings on mother’s failure to protect from the substantial risk of serious physical harm arising from mother’s violent altercations in her personal relationships.



*c. Substantial Evidence Supports The Section 300, Subdivision (j) Finding*

Mother contends there is insufficient evidence to support a jurisdictional finding under section 300, subdivision (j), because neither statutory requirement is satisfied. We disagree.

Subdivision (j) of section 300 has two requirements: “(1) that ‘[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e) or (i)’; and (2) ‘there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.’ [Citation.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 566.) Both requirements are satisfied.

The juvenile court took judicial notice of the petition filed in the siblings’ case adjudging them dependent children as described in section 300, subdivisions (a) and (b). We have previously stated the second requirement is satisfied.

Juvenile court jurisdiction was properly asserted over Sebastian under section 300, subdivisions (a), (b), and (j). Jurisdiction is properly asserted so long as substantial evidence supports one or more of the bases alleged. (*In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.)

*2. Dispositional Order Removing Sebastian From Mother’s Custody*

Mother contends the removal of Sebastian from her custody was based on speculation, not clear and convincing evidence. Mother’s argument is premised on her conduct toward, and care for, Sebastian while in the hospital and medical placement, her participation in the case plan for his siblings, and her testimony that she is no longer in an abusive relationship. We reject mother’s argument.

To take custody from a dependent child’s parent, the juvenile court must find clear and convincing evidence that there is, or would be, a substantial danger to the minor’s health, safety, protection, or physical or emotional well-being if the minor were returned home. (§ 361, subd. (c)(1).) “The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances. [Citation.]” (*In re Cole C.* (2009)

174 Cal.App.4th 900, 917.) We review the removal order for substantial evidence. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462-463.)

Mother participated in the programs required by her case plan for Sebastian's siblings. But the juvenile court found mother in "denial of the case history," which included her actions as the aggressor in some of these violent altercations in her personal relationships. The juvenile court did not find mother credible. Moreover, during mother's psychiatric evaluations, mother continued to deny the significance of the domestic violence, maintaining the incident with Luis was an isolated one and did not have anything to do with Sebastian. Although mother had participated in domestic violence classes, the psychiatric evaluators recommended individual psychotherapy to focus on her pattern of behavior and to promote insight into her behavior and accountability for her actions. The juvenile court was unconvinced that mother no longer posed a risk to her children, which included Sebastian. The record contains ample evidentiary support for the juvenile court's order removing Sebastian from mother's custody.

The juvenile court also found that reasonable efforts were made to prevent or eliminate the need for removal, which included the possibility of a voluntary family maintenance contract. (§ 361, subd. (c)(1).) The Department rejected this alternative based upon mother's history, the underlying concerns that mother continued to have contact with Luis after the January 1, 2009 incident, and Sebastian's siblings were removed from mother's custody. The evidence supported the juvenile court's rejection of the alternatives to removal.

DISPOSITION

The orders are affirmed.

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ALDRICH, J.

We concur:

CROSKEY, ACTING P. J.

KITCHING, J.